Oregon Door Company Consent Decree

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff,	
V.) Civil Action No) <u>CONSENT DECREE</u>
OREGON DOOR COMPANY)
Defendant.)

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WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint against Oregon Door Company ("Oregon Door" or "Defendant") concurrently with the lodging of this Consent Decree;

WHEREAS, Oregon Door owns and operates a manufacturing plant in Dillard, Oregon ("the Facility");

WHEREAS, the Complaint alleges that Oregon Door violated Section 110 of the Clean Air Act ("CAA"), 42 U.S.C. § 7410, and the federally-enforceable Oregon State Implementation Plan ("Oregon SIP"); Section 112 of the CAA, 42 U.S.C. § 7412, and the implementing regulation at 40 C.F.R. Part 63, Subpart QQQQ (the National Emission Standards for Organic Hazardous Air Pollutants for Surface Coating of Wood Building Products); the provisions of Title V of the CAA, 42 U.S.C. §§ 7661-7661f; and Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, and the implementing regulation at 40 C.F.R. Part 372;

WHEREAS, on March 20, 2012, EPA issued a Notice of Violation to Oregon Door with respect to the violations alleged in the Complaint;

WHEREAS on June 19, 2013, Oregon Door submitted the Notification of Compliance Status required by 40 C.F.R. § 63.9(h);

WHEREAS on July 15, 2013, Oregon Door submitted its first National Emissions Standards for Hazardous Air Pollutants ("NESHAP") 40 C.F.R. Part 63, Subpart QQQQ semiannual compliance report;

WHEREAS Oregon Door documented that it has corrected the alleged violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulation at 40 C.F.R. Part 372;

WHEREAS, Oregon Door does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint and nothing in the Complaint, nor in this Consent Decree, nor in the execution and implementation of this Consent Decree shall be treated as an admission of any violation of federal or state statutes or regulations in any litigation or forum whatsoever, except that the terms of this Consent Decree, and Defendant's failure to comply with the terms and conditions thereof, may be used by the United States in any action or dispute resolution proceeding to enforce the terms of this Consent Decree or as otherwise permitted by law;

WHEREAS, the United States and Oregon Door (the "Parties") recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c); and over the Parties.

- 2. Venue lies in the District of Oregon pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c) of EPCRA, 42 U.S.C. § 11045(c); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendant resides and is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district and because Defendant waives any objection to venue in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to this Court's jurisdiction over this Decree, over any action to enforce this Decree, and over Defendant. Defendant also consents to venue in this judicial district.
- 3. For purposes of this Consent Decree, Defendant does not contest that the Complaint states claims upon which relief may be granted pursuant to the CAA and EPCRA.
- 4. Notice of the commencement of this action has been given to the Oregon

 Department of Environmental Quality as required by Section 113(a)(1) and (b) of the CAA, 42

 U.S.C. § 7413(a)(1) and (b).

II. APPLICABILITY

- 5. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, and other entities or persons otherwise bound by law.
- 6. Defendant shall provide a copy of all relevant portions of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The foregoing requirement may be satisfied by hard copy, electronic copy, or by providing on-line access with notice to the affected personnel. Defendant shall condition

any such contract upon performance of the work in conformity with the applicable terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

- 8. Terms used in this Consent Decree that are defined in the CAA or in federal and state regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:
- a. "Air Contaminant Discharge Permit" refers to Permit No. 10-0008-ST-01 issued by the Oregon Department of Environmental Quality under the federally-approved Oregon State Implementation Plan.
- b. "Complaint" shall mean the Complaint filed by the United States in this action.
 - c. "Consent Decree" or "Decree" shall mean this Consent Decree.
- d. "Date of Entry" shall mean the date on which this Consent Decree is entered by the United States District Court for the District of Oregon.
- e. "Date of Lodging" shall mean the date that the United States files a "Notice of Lodging" of this Consent Decree with the Clerk of this Court for the purpose of providing notice and comment to the public.
- f. "Day," for purposes of requirements imposed by this Consent Decree shall mean a calendar day. In computing any period of time under this Consent Decree for submittal

of reports, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall include the next day that is not a Saturday, Sunday, or federal or state holiday.

- g. "Defendant" shall mean Oregon Door Company.
- h. "Effective Date" shall have the meaning given in Section XIV (Effective Date).
- i. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- j. "Facility" shall mean Defendant's manufacturing plant located at 477Dillard Gardens Road in Dillard, Oregon.
- k. "Final Title V Operating Permit" shall mean the Title V Operating Permit issued to Oregon Door by the Oregon Department of Environmental Quality pursuant to Chapter V of the CAA, 42 U.S.C. §§ 7661-7661a, after the time for appealing the permit has expired, if Defendant does not appeal the permit. If Defendant appeals the permit, "Final Title V Operating Permit" shall mean the Title V Operating Permit issued to Oregon Door by the Oregon Department of Environmental Quality at the conclusion of the appeals process.
- "4Q NESHAP" shall mean the National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products, 40 C.F.R. Part 63, Subpart QQQQ.
- m. "Oregon SIP" shall mean the Oregon State Implementation Plan and any amendments thereto, as approved by EPA under Section 110 of the Clean Air Act, 42 U.S.C. § 7410.
- n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

- o. "Parties" shall mean the United States of America on behalf of EPA and Oregon Door Company. "Party" means one of the named Parties.
- p. "Section" shall mean a portion of this Consent Decree that has a heading identified by a Roman numeral.
- q. "Subsection" shall mean a portion of a Section of this Consent Decree that has a heading identified by a capital letter.
- r. "United States" shall mean the United States of America acting on behalf of EPA.

IV. <u>CIVIL PENALTY</u>

9. By no later than 30 days after the Effective Date of this Consent Decree,
Defendant shall pay the sum of \$50,000 as a civil penalty. Defendant shall pay the civil penalty
by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance
with written instructions to be provided to Defendant by the Financial Litigation Unit of the U.S.
Attorney's Office for the District of Oregon, 1000 S.W. Third Avenue, Suite 600, Portland,
Oregon 97204-2902, following lodging of the Consent Decree. At the time of payment,
Defendant shall send a copy of the EFT authorization form, the EFT transaction record, and a
transmittal letter: (i) to the United States in the manner set forth in Section XIII (Notices) of this
Decree, (ii) by email to acctsreceivable CINWD@epa.gov; and (iii) by mail to:

EPA Cincinnati Finance Office 26 Martin Luther King Drive Cincinnati, Ohio 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in <u>United States v. Oregon Door Company</u>, and shall reference the civil action number assigned to this case and DOJ Case Number 90-5-2-1-10448.

- 10. If any portion of the civil penalty due to the United States is not paid when due, Defendant shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due.
- Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

A. 4Q NESHAP Compliance

- Decree, Oregon Door shall limit its emissions of organic Hazardous Air Pollutants (HAPs) to the atmosphere to no more than 231 grams HAP per liter solids (1.93 lb HAP per gallon solids) determined as a rolling 12-month emission rate according to the requirements in 40 C.F.R. § 63.4741, § 63.4751, or § 63.4761, as applicable.
- 13. <u>Semiannual Compliance Report:</u> Oregon Door shall submit to EPA the semiannual compliance reports required under 40 C.F.R. § 63.4720 in accordance with the schedule described in Section VI (Reporting Requirements).
- 14. <u>Recordkeeping Requirements:</u> By no later than the Date of Entry of this Consent Decree, Oregon Door shall begin collecting and keeping records of the data and information specified in the 4Q NESHAP as required by 40 C.F.R. § 63.4730.

B. Title V Operating Permit

15. <u>Title V Operating Permit Application:</u> Oregon Door shall cooperate with the Oregon Department of Environmental Quality ("ODEQ") in the processing of Oregon Door's

June 29, 2012 Title V Operating Permit Application by submitting all information requested by ODEQ within the time frames specified by ODEQ.

- 16. Within 30 Days of issuance of the Title V Operating Permit by ODEQ, Oregon Door shall provide a copy of such permit to EPA.
- 17. Upon receipt of the Title V Operating Permit, Oregon Door shall operate the Facility in accordance with the requirements of the Title V Operating Permit.
- Notwithstanding the reference to Defendant's Title V Operating Permit in this Consent Decree, the enforcement of such permit shall be in accordance with its own terms and the CAA and its implementing regulations, and nothing in this Decree shall be construed to relax any terms and conditions in the Title V Operating Permit. Defendant's Title V Operating Permit shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Operating Permit, subject to the terms of Section XVII (Termination) of this Consent Decree.

VI. REPORTING REQUIREMENTS

- Due Dates. The first semiannual compliance report was submitted on July 15, 2013, and covered the period between January 1 and June 30, 2013. The next semiannual compliance report will be due by January 30, 2014, covering the period between July 1 and December 31, 2013. Until termination of this Decree, subsequent reports will be due on January 30 and July 30 of each year and shall cover the prior half-year (*i.e.*, either July 1 to December 31 or January 1 to June 30).
- 20. Each report submitted under this Consent Decree shall be signed by the plant manager, a corporate official responsible for environmental management and compliance, or a

corporate official responsible for plant engineering management, and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete.

- 21. All Reports under this Consent Decree shall be submitted to EPA in the manner designated in Section XIII (Notices) of this Consent Decree.
- 22. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section are in addition to any other reports, plans or submissions required by other Sections of this Consent Decree
- 23. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

24. <u>Failure to Pay Civil Penalty</u>. If Defendant fails to pay any portion of the civil penalty required to be paid under Section IV (Civil Penalty) of this Decree when due, Defendant shall pay a stipulated penalty of \$2,500 per day for each day that the payment is late. Late payment of the civil penalty and any accrued stipulated penalties shall be made in accordance with Paragraph 9.

- 25. <u>Failure to Meet Consent Decree Obligations.</u> Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Paragraph 26 below unless excused under Section VIII (Force Majeure).
- 26. <u>Injunctive Relief</u>. If Defendant fails to satisfactorily complete the Injunctive Relief by the deadlines set forth in Section V (Compliance Requirements), Defendant shall pay stipulated penalties for each day for which it fails to satisfactorily complete the Injunctive Relief, as follows:

Penalty Per Day	Period of Noncompliance	
\$750	1st through 14th day	
\$1,000	15th through 30th day	
\$1,250	31st day and beyond	

- 27. <u>Waiver of Payment</u>. The United States may, in its unreviewable discretion, reduce or waive payment of stipulated penalties otherwise due to it under this Consent Decree.
- Demand for Stipulated Penalties. A written demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates; the stipulated penalty amount (as can be best estimated) that the United States is demanding for each violation; the calculation method underlying the demand; and the grounds upon which the demand is based. Prior to issuing a written demand for stipulated penalties, the United States may, in its unreviewable discretion, contact Defendant for informal discussion of matters that the United States believes may merit stipulated penalties.
- 29. <u>Stipulated Penalties Accrual</u>. Stipulated penalties will begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and will continue

to accrue until performance is satisfactorily completed or the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

- 30. <u>Stipulated Penalties Payment Due Date</u>. Stipulated penalties shall be paid no later than 60 days after receipt of a written demand by the United States unless the demand is disputed through compliance with the requirements of the dispute resolution provisions of this Decree.
- Manner of Payment of Stipulated Penalties. Stipulated penalties owing to the United States of under \$10,000 will be paid by check and made payable to "U.S. Department of Justice," referencing DOJ Case Number 90-5-2-1-10448, and delivered to the U.S. Attorney's Office in the District of Oregon, 1000 S.W. Third Avenue, Suite 600, Portland, Oregon 97204-2902. Stipulated penalties owing to the United States of \$10,000 or more will be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree. All transmittal correspondence shall state that the payment is for stipulated penalties, shall identify the violations to which the payment relates, and shall include the same identifying information required by Paragraph 9.
- 32. <u>Disputes Over Stipulated Penalties</u>. By no later than 60 Days after receiving a demand for stipulated penalties, Defendant may dispute liability for any or all stipulated penalties demanded by invoking the dispute resolution procedures of Section IX. If Defendant fails to pay stipulated penalties when due and does not prevail in dispute resolution, Defendant shall be liable for interest at the rate specified in 28 U.S.C. § 1961, accruing as of the date payment became due.
- 33. No amount of the stipulated penalties paid by Defendant shall be used to reduce its federal tax obligations.

34. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for a violation of this Consent Decree or applicable law. Defendant reserves the right to challenge the United States' exercise of this option. Where a violation of this Consent Decree is also a violation of the CAA or its implementing regulations, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

- 35. "Force Majeure," for purposes of this Consent Decree, is defined as any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay and any adverse environmental effects of the delay.
- 36. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Defendant's obligations under this Consent Decree shall not constitute circumstances beyond Defendant's control nor serve as the basis for an extension of time under this Section.
- 37. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Defendant shall notify

EPA in writing promptly but not later than 14 business days after the time Defendant first knew or should have known by the exercise of due diligence that the event might cause a delay. In the written notice, Defendant shall specifically reference this Paragraph of the Consent Decree and shall provide, to the extent such information is available at the time, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a Force Majeure event; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known. The written notice required by this Paragraph shall be effective upon the mailing of the same by overnight mail or by certified mail, return receipt requested, to EPA in the manner set forth in Section XIII (Notices).

- 38. Failure by Defendant to materially comply with the notice requirements specified in Paragraph 37 shall preclude Defendant from asserting any claim of Force Majeure with respect to the particular event involved, unless the United States, in its unreviewable discretion, permits Defendant to assert a Force Majeure claim with respect to the particular event.
- 39. The United States shall respond in writing to Defendant regarding Defendant's claim of Force Majeure within 45 Days of receipt of the notice required under Paragraph 37.

 After this initial response, the Parties may confer.
- 40. If EPA initially or ultimately agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this

Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. However, Defendant may request that the time be extended for performance of any other obligation that is affected by the Force Majeure event. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

- 41. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, or if the parties fail to agree on the length of the delay attributable to the Force Majeure event, EPA will so notify Defendant in writing of its final decision.
- 42. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 45 Days after receipt of EPA's notice under Paragraph 39 (if the Parties do not confer after that notice), or under Paragraph 41 (if the Parties confer after the Paragraph 39 notice). In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant materially complied with the requirements of Paragraphs 37 and 42. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. <u>DISPUTE RESOLUTION</u>

- 43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.
- 44. <u>Informal Dispute Resolution</u>. The first stage of dispute resolution shall consist of informal negotiations. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days after the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve the dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless within 45 Days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures set forth below.
- 45. <u>Formal Dispute Resolution</u>. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant. Defendant and the United States may hold additional discussions, which may, in the unreviewable discretion of each party, include higher-level representatives of any of the parties.
- 46. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include,

but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

- 47. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within 60 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.
- 48. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court for responses to dispositive motions. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.
- 49. In a formal dispute resolution proceeding under this Section, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and the CAA and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Defendant reserves the right to argue to the contrary.
- 50. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

- 51. Any authorized representative of the United States, including its attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all reasonable times, upon presentation of credentials, to:
 - a. monitor the progress of activities required under this Consent Decree;
 - b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
 - c. obtain documentary evidence, including photographs and similar data, relevant to compliance with the terms of this Consent Decree; and
 - d. assess Defendant's compliance with this Consent Decree.
- 52. Until five years after termination of this Consent Decree, Defendant shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that directly relate to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request

copies of any documents, records, or other information required to be maintained under this Paragraph.

- 53. Except for emissions data, Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2, where applicable. Except for emissions data, Defendant reserves the right to assert any legal privilege and the United States reserves the right to challenge any claim of privilege.
- 54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

- 55. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the Notice of Violation from the date those claims accrued through the Date of Lodging.
- 56. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, EPCRA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 55. The United States further reserves all legal and equitable remedies to

address any situation that may present an imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

- 57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility or the Oregon Door Company, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 55 of this Section.
- 58. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.
- 59. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the

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rights of third parties not party to this Consent Decree, against Defendant, except as otherwise

provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause

of action to, any third party that is not party to this Consent Decree.

XII. COSTS

61. The Parties shall bear their own costs of this action, including attorneys' fees,

except that the United States shall be entitled to collect the costs (including attorneys' fees)

against Defendant incurred in any action necessary to enforce this Consent Decree or to collect

any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

62. Unless otherwise specified herein, whenever notifications, submissions, or

communications are required by this Consent Decree, they shall be made in writing and

addressed to the persons set forth below. Submission of hard copies is required and shall be

sufficient to comply with the notice requirements of this Consent Decree. The email addresses

listed below are to permit the submission of courtesy copies.

Notice or submission to the United States:

Chief, Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611 Ben Franklin Station

Washington, DC 20044-7611

Re: DOJ No. 90-5-2-1-10448

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Notice or submission to EPA:

Office of Compliance and Enforcement EPA Region 10 1200 Sixth Avenue, MS OCE-127 Seattle, Washington 98101 Attn: John Keenan

For courtesy purposes only, electronic copies to John Keenan at:

Keenan.john@epa.gov

Notice or submission to Defendant: Brian Bennett Vice President & General Manager Oregon Door Company PO Box 1960 Winston, OR 97496

Tom Wood Outside Counsel to Oregon Door Company Stoel Rives LLP 900 SW Fifth Ave.; Suite 2600 Portland, OR 97204

For courtesy purposes only, electronic copies to David DeYoung at: david@oregondoor.com.

Any Party may, by written notice to the other Party, change its designated notice recipient(s) or notice address(es) provided above. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

63. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant

hereby agrees that it shall be bound upon the Date of Lodging to comply with obligations of Defendant specified in this Consent Decree as accruing upon the Date of Lodging. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to comply with requirements of this Consent Decree upon the Date of Lodging shall terminate.

XV. RETENTION OF JURISDICTION

64. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purposes of resolving disputes arising under this Decree pursuant to Section IX (Dispute Resolution), entering orders modifying this Decree pursuant to Section XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

- 65. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States and Defendant. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.
- 66. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution) of this Decree; provided, however, that instead of the burden of proof as provided by Paragraph 49, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

67. After Defendant has obtained a federally enforceable Final Title V Operating Permit as defined in Section III of this Decree, has fulfilled all other requirements of this

Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may send the United States a Request for Termination of this Consent Decree stating that Defendant has satisfied those requirements. In the Request for Termination, the Defendant must demonstrate that it has maintained satisfactory compliance with this Consent Decree for the six-month period immediately preceding the Request for Termination. In no event may this Consent Decree be terminated with respect to Defendant if the civil penalty and/or any outstanding stipulated penalties have not been paid. The Request for Termination shall include all necessary supporting documentation.

- 68. Following receipt by the United States of a Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendant has satisfactorily complied with the requirements for termination. If the United States agrees that the Decree may be terminated with respect to the Defendant, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.
- 69. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section IX (Dispute Resolution) of this Decree. However, Defendant shall not invoke dispute resolution for any dispute regarding termination until 60 Days after sending its Request for Termination.

XVIII. PUBLIC PARTICIPATION

70. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further

notice and agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. <u>SIGNATORIES/SERVICE</u>

- 71. The undersigned representatives of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice (or his or her designee) each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.
- 72. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.
- 73. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

74. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the

settlement it represents, and no such extrinsic document or statement of any kind shall be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

75. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court in this action as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

DATED this	day of	2013.
	UNITED STATE DISTRICT OF C	ES DISTRICT JUDGE PREGON

We hereby consent to the entry of the Consent Decree in the matter of <u>United States v. Oregon Door Company</u>, subject to public notice and comment.

FOR THE UNITED STATES OF AMERICA

THOMAS A. MARIANI

Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

CYNTHIA M. FERGUSON

Senior Litigator Environmental Enforcement Section Environment and Natural Resources Division United States Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611

Phone: (202) 616-6560 Fax: (202) 514-8865

Email: cynthia.ferguson@usdoj.gov

AMANDA MARSHALL United States Attorney District of Oregon

NEIL EVANS Assistant United States Attorney Mark O. Hatfield U.S. Courthouse

1000 SW Third Avenue Suite 600

Portland, Oregon 97204 Phone: (503)727-1000

Phone: (503)727-1053 direct Email: Neil.Evans@usdoj.gov Oregon Door Company Consent Decree

I hereby consent to the entry of the Consent Decree in the matter of <u>United States v. Oregon Door Company</u>, subject to public notice and comment.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ALLVNI CTEDN

ALLYN L. STERN
Regional Counsel
U.S. Environmental Protection Agency
Region 10
Seattle, Washington

I hereby consent to the entry of the Consent Decree in the matter of <u>United Company</u> .	l States v.	Oregon Door

Oregon Door Company Consent Decree

FOR OREGON DOOR COMPANY

BRIAN BENNETT
Vice President & General Manager